

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
SEP 27 2005
CLERK

TRAVIS E. SMILEY,

CIV. 05-4094

Plaintiff,

vs.

OPINION AND ORDER

TROY PONTO, Unit Manager;
RODNEY BROCKHOFT, Lt., Security;
JOE D. MILLER, Lt., Special Security;
DARYL R. SLYKHUIS, Deputy/Interim
Warden; DOUGLAS L. WEBER, Warden/
Interim DOC Cabinet Secretary, Department
of Corrections; all in their individual and
official capacities,

Defendant.

Plaintiff has filed a motion for appointment of counsel (Doc. 7). "Indigent civil litigants do not have a constitutional or statutory right to appointed counsel." Edgington v. Missouri Dep't of Corrections, 52 F.3d 777, 780 (8th Cir. 1995). The factors relevant to evaluating a request for appointment of counsel include "whether both the plaintiff and the court will benefit from the appointment of counsel, taking into account the factual and legal complexity of the case, the presence or absence of conflicting testimony, and the plaintiff's ability to investigate the facts and present his claim." Davis v. Scott, 94 F.3d 444, 447 (8th Cir. 1996).

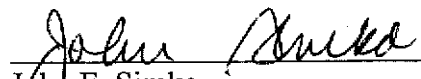
Like all individuals untrained in the law, plaintiff may benefit from the assistance of counsel, but the Court does not find it necessary to appoint counsel in this matter. The benefit to the Court of appointment of counsel would not be substantial as the Court is well aware of the law regarding plaintiff's claim. Plaintiff, although incarcerated, is able to investigate the facts of his claim. It is not clear at the present time whether there will be conflicting testimony in this case. The legal issues involved do not appear to be legally complex at this point in the proceedings. Considering all the

relevant factors, as discussed above, and upon the record to-date, it is hereby

ORDERED that plaintiff's motion for appointment of counsel (Doc. 7) is denied without prejudice.


Dated this 26th day of September, 2005.

BY THE COURT:



John E. Simko
United States Magistrate Judge

ATTEST:
JOSEPH HAAS, CLERK

By: , Deputy
(SEAL)